



April 24, 2001

Ms. Cynthia B. Garcia
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2001-1622

Dear Ms. Garcia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146386.

The City of Fort Worth (the "city") received a request for "any complaint regarding excessive force" made against a named police officer. You state that the only information responsive to the request is the submitted document, marked by you as Exhibit C. You assert that this information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the civil service commissioner or designee is required to maintain, and an internal file that the police department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer in accordance with chapter 143 of the Local Government Code, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and assignment to uncompensated duty. *See Id.* §§ 143.051-.055. Such records are not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. *See Id.* § 143.089(f); Open Records

Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in the officer's civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, No. 04-99-00848-CV, 2000 WL 1918877 (Tex. App.--San Antonio Dec. 20, 2000, no pet. h.); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You state that Exhibit C was found in the named officer's personnel file, but you do not explain whether the personnel file to which you refer is the section 143.089(a) civil service file or the section 143.089(g) police department internal file. However, since you also state that the exhibit "should not have been placed" in the file and that it was placed in the file "through a clerical error," we assume you are referring to the section 143.089(a) civil service file. Information pertaining to alleged misconduct that did not result in disciplinary action in accordance with chapter 143 is appropriately placed in the section 143.089(g) file. See Attorney General Opinion No. JC-0257 at 7-9 (2000). The submitted Exhibit C pertains to a complaint against the officer that resulted in an adverse action, but not a type of disciplinary action prescribed by chapter 143. See Local Gov't Code §§ 143.051-.055 (removal, suspension, demotion, and uncompensated duty). We therefore conclude that this information is appropriately placed in the police department's internal section 143.089(g) file, and as such, the information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

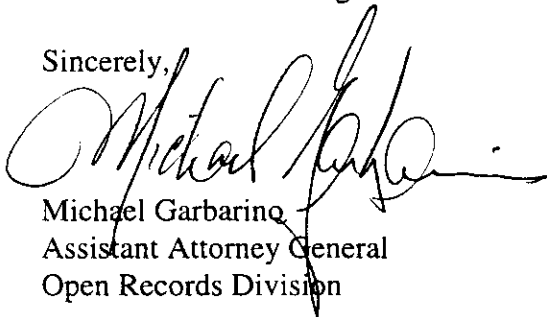
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 146386

Encl. Submitted documents

cc: Ms. Jeanne Strickland
P.O. Box 3128
Fort Worth, Texas 76113
(w/o enclosures)